

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MISS JONES LLC,

Plaintiff,

v.

LANCE ARCELLO, and ADVANTAGE ASSETS
II INC.,

Defendants.

MEMORANDUM & ORDER
17-CV-00895 (MKB) (RML)

MARGO K. BRODIE, United States District Judge:

Plaintiff Miss Jones LLC commenced the above-captioned residential mortgage foreclosure action against Defendants Lance Arcello and Advantage Assets II Inc. (“Advantage Assets”), pursuant to New York Real Property Actions and Proceedings Law, N.Y. Real Prop. Acts. Law §§ 1301 *et seq.* (“RPAPL”). (Compl., Docket Entry No. 1.) On July 6, 2017, Plaintiff moved for default judgment, computation of damages, and judgment of foreclosure and sale, on the property known as 61 Princeton Avenue, Staten Island, New York (the “Property”). (Pl. Mot. for Default J., Docket Entry No. 20.) On June 6, 2017, the Court referred the motion for default judgment, computation of damages, and judgment of foreclosure and sale to Magistrate Judge Robert M. Levy for a report and recommendation. (Order dated July 6, 2017.)

By report and recommendation dated March 2, 2018, Judge Levy recommended that the Court grant Plaintiff’s motion for default judgment of foreclosure and sale as to Defendant Arcello, but deny the motion without prejudice with respect to Defendant Advantage Assets, pending submission of evidence that Defendant Advantage Assets has an actual interest in the property (the “R&R”). (R&R, Docket Entry No. 29.) As to damages, Judge Levy recommended

that Plaintiff receive from Defendant Arcello a deficiency judgment of the outstanding principal in the amount of \$190,809.68, but that the request for interest and late charges be denied without prejudice, pending a submission of further documentation establishing the rate of interest and late charges. (*Id.*) No party has objected to the R&R.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Failure to object to a magistrate judge's report and recommendation within the prescribed time limit 'may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.'" *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's report and recommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, the Court adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the Court grants Plaintiff's motion for default judgment of foreclosure and sale as to Defendant Arcello, but denies the motion without prejudice as to Defendant Advantage Assets, pending submission of evidence that Defendant Advantage Assets has an actual interest in the property. As to damages, the Court enters judgment as to Defendant Arcello in the amount of the outstanding principal,

\$190,809.68, but denies the request for interest and late charges without prejudice, pending a submission of further documentation establishing the rate of interest and late charges.

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge

Dated: March 28, 2018
Brooklyn, New York